HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C.) No.126 of 2006

Biju Thomas

versus

Shankar Gayakwad and others

and

Miscellaneous Appeal (C.) No.43 of 2006

The Oriental Insurance Company Limited

versus

Bijoo Thomas and others

ORDER

Post for 19-09-2007

Sd-/
Dilip Raosaheb Deshmukh
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C.) No.126 of 2006

Appellant Claimant

Biju Thomas, S/o M.T. Thomas, Aged about 30 years, R/o LIG-170, District Raipur (C.G.)

versus

Respondents Non-Applicants

1. Shankar Gayakwad, S/o Nagorao Maratha, aged about 21 years, R/o Rajatalab, Raipur, Tah. & District Raipur (C.G.)
2. Kuldeep Singh Ahulwalia, By Asian Roadways Amanaka, District Raipur (C.G.)
3. The Oriental Insurance Company Limited, Mandal Office No.2, 2nd Floor, Chawala Complex, Sainagar, Devendra Nagar, Marg Raipur, By Divisional Manager, Kachahari Chowk, Jail Road, Raipur (C.G.)

Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1994

Miscellaneous Appeal (C.) No.43 of 2006

Appellant N.A. 3

The Oriental Insurance Company Limited, D.O. II Second Floor, Chawala Complex, Sainagar, Devendra Nagar, Marg, Raipur (C.G.)

versus

Respondents

1. Bijoo Thomas, aged about 30 years, S/o M.T. Thomas, R/o LIG-170, Tatibandh, District Raigarh (C.G.)
2. Shanker Gaikwad, aged about 21 years, S/o Nagorao Maratha, R/o Rajatalab, Raipur, Tah. & District Raipur (C.G.)
3. Kuldeep Singh Ahluwalia, through Asian Roadvej Aamanaka, Raipur, District Raipur (C.G.)

Miscellaneous Appeal under Section 173 of the Motor Vehicles Act

Present : Shri S.C. Verma, counsel for the appellant in M.A.(C.) No.126/2006 and for respondent No.1 in M.A.(C.) No.43/2006.
Shri A. K. Athaley, counsel for the appellant in M.A.(C.) No.43/2006 and for respondent No.3 in M.A.(C.) No.126/2006.
None appears for other respondents.

ORDER

(Passed on 19th of September, 2007)

This common order shall govern M.A. (C.) No.126/2006 filed by the appellant/claimant for enhancement of compensation and M.A.(C.) No.43/2006 filed by the insurance company for right to recover compensation awarded from the owner.

(2) The owner and driver of the offending vehicle bearing Registration No.C.G.-04/A/8011 did not appear despite notices being issued as also publication being made in the local Hindi Newspaper " Nava Bharat" vide order dated 03-05-2007. Since both were *ex parte* before the XIth Additional Motor Accidents Claims Tribunal, F.T.C., Raipur (henceforth 'the MACT'), further notice was dispensed with.

(3) Learned counsel for the appellant/claimant as also for the insurance company have admitted the following facts in both appeals:

(A) On 23-07-2003, the appellant-claimant Biju Thomas, supervisor in Sky Automobiles, Mahoba Bazar, Raipur was taking trial of new Maruti Van with a proposed purchaser. Near the over bridge at Mahoba Bazar, the respondent No.1-Shankar Gayakwad drove the Mahendra Jeep bearing Registration No.C.G.-04-A/8011 in a rash and negligent manner and dashed the Maruti Van resulting in fracture of tibia and fibula bone of the right leg of the appellant-claimant Biju Thomas.

(B) The M.A.C.T. has awarded total compensation of Rs.73,400/- against the insurance company placing reliance on **New India Assurance Co. Ltd. vs. Rula and others (2000) 3 Supreme Court Cases 195** as also **The Oriental Insurance Co. Ltd. vs. Inderjit Kaur, (1998) 1 S.C.C.-371** and held that although the policy of insurance of Jeep No.CG-04-A/8011 issued by the insurance company was cancelled due to the cheque towards premium issued by the insured having been dishonoured on 19-06-2003, the insurance company was liable to pay compensation.

(4) Shri S. C. Verma, learned counsel for the appellant-claimant has urged that the claimant had suffered 30% permanent disability in the right leg, and therefore, the compensation awarded by the MACT is on the lower side. It was also submitted that the MACT did not award compensation under the conventional heads of special diet during treatment as also the cost of attendant during hospitalization.

(5) On the other hand, Shri A.K.Athaley, learned counsel for the insurance company solely urged that in view of the fact that the insured had not paid the premium on the policy issued, the insurance company ought to have been given the right to recover compensation from the owner of the Jeep bearing Registration No.C.G.-04-A/8011. Shri A. K. Athaley, learned counsel for the insurance company did not assail the finding that in view of the dictum of Apex Court in ***The Oriental Insurance Co. Ltd.*** vs. ***Inderjit Kaur*** (supra) and ***New India Assurance Co. Ltd.*** vs. ***Rula and others*** (supra), the insurance company was liable to pay compensation. No other point was taken.

(6) Having considered the rival submissions, I have perused the impugned award as also the statement of Dr. G. S. Bachhu A.W. 2 recorded

by the M.A.C.T. on 18-04-2006. It is pertinent to note that the accident occurred on 23-07-2003. The claimant did not examine the doctor who had treated him. Dr. G. S. Bachhu, A. W.2 had admitted in para-2 of his cross examination that he was not the treating doctor and had first seen the appellant-claimant Biju Thomas on 10-03-2006 i.e. almost 2 & ½ years after the date of accident. He also admitted that although he was a member of Medical Board yet before issuing the certificate he did not seek opinion of other members. It was also submitted by Dr. Bachchu, A.W.-2 that the certificate of permanent disability issued by him was not of the Medical Board.

(7) The MACT has awarded compensation as under:

Heads	Amount in Rs.
Expenses incurred towards treatment	28,400
Towards loss of income	40,000
Towards pain and suffering	5,000
Total =	73,400

(8) Considering the fact that the appellant-claimant did not examine the treating doctor and the nature of testimony of Dr. Bachchu (A.W.-2), in my considered opinion, no ground is made out to enhance the sum of Rs.40,000/- awarded by the MACT towards loss of income. The compensation shown in para 8 under conventional heads, i.e., special diet during treatment as also towards cost of attendant is also commensurate with the facts of the case.

(9) So far as other conventional heads not considered by the MACT considering the fact that the appellant-claimant was hospitalized only for a

(28)

period of 10 days, it appears proper to award an additional sum of Rs.2,500/- towards cost of attendant and Rs.2,500/- towards special diet. In this view of the matter, the compensation awarded by the M.A.C.T. deserves to be enhanced by Rs.5,000/-.

(10) The only point that requires consideration is whether the insurance company ought to have been given the right to recover compensation from the owner of Jeep bearing Registration No.C.G.-04-A/8011. Considering the fact that the MACT has held that the policy of insurance was cancelled by the insurer on 19-06-2003, i.e., prior to the accident, due to non payment of premium the MACT ought to have given the right to the insurance company to recover compensation from the owner of Jeep bearing Registration No. C.G.-04-A/8011.

(11) In the result, both the appeals, i.e., M.A.(C.) No.126/2006 and M.A.(C.) No.43/2006 are allowed. Compensation awarded by the MACT is enhanced to Rs.78,400/-. After adjusting the compensation already deposited, if any, the insurance company shall deposit the remaining compensation within a period of 30 days from today, failing which, it shall also be liable to pay interest @ 8.5% per annum from the date of application till realization. The insurance company may initiate execution proceedings to recover the compensation paid by it from the owner of the Jeep.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Tumane